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No. 04-278

IN THE

Supreme Court of the United States

TOWN OF CASTLE ROCK, COLORADO,

Petitioner,

v.

JESSICA GONZALES, individually and as next best friend of her deceased minor children REBECCA GONZALES, KATHERYN GONZALES, AND LESLIE GONZALES,

Respondents.

On Writ of Certiorari to the United States Court of Appeals For the Tenth Circuit

BRIEF OF *AMICUS CURIAE* THE DENVER POLICE PROTECTIVE ASSOCIATION, THE PEACE OFFICERS RESEARCH ASSOCIATION OF CALIFORNIA LEGAL DEFENSE FUND, AND THE COLORADO ASSOCIATION OF CHIEF'S OF POLICE IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

1. Whether, in conflict with decision of the Sixth, Seventh, Eighth, and D.C. Circuits, the Tenth Circuit's decision permitting a *procedural* due process claim against a local government for its failure to protect the holder of a partial restraining order from private violence, so circumvents as to effectively repudiate this Court's holding in *DeShaney* rejecting a similar *substantive* due process claim?

2. If the Fourteenth Amendment's Due Process Clause is read to permit, via its procedural aspects, the same substantive claims already rejected by this Court in *DeShaney*, what kind of process is required for police inaction with respect to a partial restraining order *not* to violate the constitution?

PARTIES TO THE PROCEEDING

Petitioner: Town of Castle Rock, Colorado, a Colorado home rule municipal corporation.

Respondent: Jessica Gonzales, individually and as next friend of her deceased minor children Rebecca Gonzales, Katheryn Gonzales, and Leslie Gonzales.

Other Defendants Below: Aaron Ahlfinger, Robert S. Brink, and Marc Ruisi, current or former members of the Town of Castle Rock Police Department.

Amici Curiae Below: Colorado Municipal League; Colorado Counties, Inc.; and Colorado Association of Chiefs of Police.

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INTEREST OF *AMICUS CURIAE*[1]

The Denver Police Protective Association ("DPPA") is an association representing police officers who are employed

[1] The Denver Police Protective Association, Peace Officers Research Association of California Legal Defense Fund, and Colorado Association of Chief's of Police files this brief with the consent of all parties. The letters granting consent have been previously filed or are being filed concurrently. No counsel for a party authored this brief in whole or in part. No person or entity, other than *amicus curiae*, its members, or its counsel made a monetary contribution specifically for the preparation or submission of this brief.

by the City and County of Denver, Colorado. The purpose of the DPPA is to improve conditions of employment of Denver officers, to aid in the improvement of the laws that govern the conduct and discipline of police officers, to encourage police professionalism, and to protect member-officers from injustice.

The Peace Officers Research Association of California Legal Defense Fund is an organization which provides prepaid group legal services to peace officers in matters related to their employment. The Fund and its member public safety organizations serve peace officers throughout the western United States. The following member public safety organizations of the fund also join in this brief: the Peace Officers Research Association of California, Peace Officers Research Association of Nevada, North Dakota Troopers Association, Arizona Police Association, National Border Patrol Council, Operating Engineers No. 3, Colorado Police Protective Association, Montana Police Protective Association, Oregon State Police Officers Association, Oregon Council of Police Associations, and Wyoming Highway Patrol Association.

The Colorado Association of Chiefs of Police (CACP) is a nonprofit organization comprised of chiefs of police of Colorado municipalities. CACP, has, as one of its purposes, representing the chiefs of police in matters of statewide concern to municipal law enforcement agencies, including representing its members before the state and federal appellate courts in Colorado.

The judgment of the Tenth Circuit Court of Appeals, if affirmed, will create great confusion for public employees in the performance of their duties, and leave them little guidance to evaluate when a property right exists and what process is due in the enforcement of that right. *Amici* believe that this case will impact the 156,607 law enforcement officers employed by the United States Government, the

105,933 employed by state governments, and approximately 800,000 law enforcement officers employed by local governments.[2] If unchecked, the impact of the subject decision may extend to approximately 18,000,000 other public employees, including 1,000,000 public welfare employees and 5,000,000 elementary and secondary school teachers.[3]

In addition, due to the inevitable shortages of resources and the status of police and other public employees as "first responders" in the War on Terror, circumstances likely will arise in which public safety employees will have to reconcile the process required by the Tenth Circuit with the demands of other emergency situations. Simply stated, the Court of Appeals decision in *Gonzales v. Town of Castle Rock*, 366 F.3d 1093 (CA10 2004), offers officers little guidance on how to exercise their discretion in such cases and subjects officers to liability if they fail to offer "street-level" due process.

Lastly, if the Court permits this constitutional claim to proceed, public employees will be left to apply the Court's analysis to innumerable other laws and regulations that govern their duties which may be read to confer a property right under the holding in *Gonzales*. The *Amici* are concerned that local and state governments will simply eliminate any law which may be read to confer a property right. The collateral effect will be the elimination of standards for public employees in the discharge of their duties. Such result would seriously undermine the delivery of all public services and lead to a system that is arbitrary and hostile to the very rights of citizens the *en banc* panel

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[2] Source: U.S. Census, March, 2003 Public Employment Data.

[3] *Id.* For a discussion of the impact on school teachers for "educational malpractice," *See* 1987 WL 880162 (Brief of *Amicus Curiae* The National School Boards Association in Support of Respondents submitted in *DeShaney*).

sought to protect.

SUMMARY OF ARGUMENT

In 1964, Charles Reich wrote: "We must create a new property." Charles A. Reich, The New Property, 73 YALE L.J. 733, 787 (1964). Reich's call to the Courts focused on the rising need to protect "privileges," created by a state statute, which were replacing traditional forms of property. He wrote:

> Society today is built around entitlements. . . . Many of the most important of these entitlements now flow from government. . . . Such sources of security, whether private or public, are no longer regarded as luxuries or gratuities; to the recipients they are essentials, fully deserved, and in no sense a form of charity.

Charles A. Reich, Individual Rights and Social Welfare: The Emerging Legal Issues, 74 YALE L.J. 1245, 1255 (1965).

Five years after its publication, Reich's article was cited with approval by a majority of this Court. *Goldberg v. Kelly*, 397 U.S. 254 (1970). In so doing, this Court held that a determination of whether a right was sufficient to give rise to constitutionally adequate procedures did not depend on the distinction of whether such benefit was a right or a privilege. *Goldberg v. Kelly*, 397 U.S. 254, 262-63 (1970). Rather, the Court held that John Kelly had a property interest in continued welfare payments, the denial of which required pre-deprivation process consistent with the Fourteenth Amendment. Two years thereafter, in the companion cases of *Board of Regents v. Roth*, 408 U.S. 564 (1972), and *Perry v. Sindermann*, 408 U.S. 593 (1972), this Court held that a right to continued employment is, under certain circumstances, a property right which cannot be denied absent constitutionally sufficient procedures. The Court made clear in *Roth* that the question of whether an interest is

a property right does not depend on the "wooden" distinction between privileges and rights. *Roth*, 408 U.S., at 571.

This Court continued to recognize these "new" property rights over the course of the 1970s. As noted by the *en banc* panel of the Tenth Circuit, this Court has recognized that a person may have a property interest in professional licenses, driver's licenses, receipt of utility services, and disability benefits, *Gonzales v. City of Castle Rock*, 366 F.3d 1093 (CA10 2004) (*en banc*) (citation omitted), all of which are "new property" rights as characterized by Reich. 73 YALE L.J., at 786. These interests, once thought merely privileges, have been recognized as property rights that cannot be denied absent constitutionally adequate procedures.

Today, the Court is asked to decide whether the Tenth Circuit *en banc* majority was correct in expanding this "new property" to the "reasonable" police enforcement of a domestic restraining order. As in *DeShaney*, "[t]he facts of this case are undeniably tragic." *DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189, 191 (1989). Nonetheless, this tribunal must determine whether the Defendants' conduct transgressed the standards of the Fourteenth Amendment of the United States Constitution, not whether their conduct was merely objectionable in the abstract. Once the emotion generated by the facts is set aside, the inescapable conclusion is that the Plaintiff in this case has no constitutional right to any pre-deprivation procedure. The underpinnings of this conclusion are: (1) the decision of the Court of Appeals is inconsistent with this Court's holding in *DeShaney*, 489 U.S., at 195, that the Due Process Clause is "phrased as a limitation on the State's power to act, not as a guarantee of certain minimum levels of security;" (2) the statute and restraining order at issue cannot create a reasonable expectation of a property right because too much is left to official discretion; (3) state officials are not liable on a claim under *Monell v. New York City Dept. of*

Social Servs., 436 U.S. 658 (1978), for mere negligent acts; and (4) the legislative history does not suggest that the General Assembly intended to create a property right .

Finally, the *en banc* decision of the Tenth Circuit, if affirmed, will hamper the effective and efficient delivery of all public benefits and services. Public employees exercise broad discretion in the daily discharge of their duties, at least as that term has previously been defined by *this* Court. If allowed to stand, the Tenth Circuit's analysis would dictate that certain tasks performed by public employees are not discretionary, but rather are mandatory, thus requiring a "street-level" pre-deprivation hearing. Such a requirement would bring government operations to a halt at the most basic level. The confusion created by this decision, if affirmed, will wreak its greatest havoc on the streets, where emergencies constantly force reallocation of scarce public safety resources.

ARGUMENT

I. Plaintiffs Had No Property Interest Under the Statute and Protective order, and Thus Plaintiffs Failed to State a Claim Under the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

A. The Holding of the Court of Appeals Is Inconsistent With *DeShaney* and Creates an Incentive for State and Local Governments to Eliminate Similar Mandatory Statutes, Which Result Would Hamper the Delivery of Public Services

In *DeShaney*, a majority of this Court held that "nothing in the language of the Due Process clause itself requires the state to protect life, liberty, and property of its citizens against invasion by private actors." 489 U.S., at 195. Importantly, the Court noted that the Due Process

Clause is "phrased as a *limitation* on the State's power to act, not as a guarantee of certain minimum levels of security." *Id* (emphasis added). Thus, as the District Court concluded in this case, Plaintiffs could not proceed with either a substantive or procedural due process claim. The Tenth Circuit held that while there was no substantive claim, a claim nonetheless existed for the failure to provide a proper procedure for the enforcement of police protection created by the statute and order. *Amici* believe it would be inconsistent to hold on one hand that a State has no constitutional duty to provide police protection, while holding on the other hand that police protection cannot be denied without sufficient process. *DeShaney* was intended to foreclose a claim such as this where there was no affirmative abuse of power.

The analytical conclusion in this case, if affirmed, would allow state governments to recreate the rights-privileges distinction eliminated by this Court in *Goldberg*, and impose a font of federal tort liability. Governments would have no incentive to keep such privileges in existence. To do so would only invite litigation and liability. On this issue, Professor Erwin Chemerinsky wrote: "In essence, the rights-privileges distinction is recreated under a different label; the state could deny a property interest by making it clear that the benefit or program was something that the government could terminate at any point." Erwin Chemerinsky, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES (1997), at 432. The result of eliminating the specific statutory and regulatory guidance, Chemerinsky says, is that "the more arbitrary the government is, the less there can be reasonable expectations to continued receipt of the benefit, the less likely there will be a requirement of due process." *Id*. The result is public employees will have fewer specifically defined duties and will make decisions in a more arbitrary and inconsistent fashion. The result would be an even more chaotic and uneven public sector.

This Court must avoid this inevitable result, and hold

that an expectation in police enforcement is not a right of property protected by the Due Process Clause of the United States Constitution.

B. Police Officers Have Discretion Under C.R.S. § 18-6-803.5 and the Court Order to Decide Whether to Arrest and When to Seek a Warrant, Thus Negating Any Reasonable Expectation of Enforcement of the Order Sufficient to be Termed Property Under *Roth*

The Tenth Circuit's analysis has a narrow perspective of an official's exercise of executive discretion under the terms of C.R.S. 18-6-803.5, and would require District Courts to hold that many of the discretionary, executive functions engaged in by public employees actually create an expectation in members of the public that those duties are absolute. This Court has framed the issue of whether such expectation creates a property right in terms of whether the law creating the expectation of an entitlement places any "real limits on decisionmaker discretion." *Board of Pardons v. Allen*, 107 S.Ct. 2415, 2423 (1987) (O'Conner, J. dissenting); *See* also *Olim v. Wakenekona*, 461 U.S. 238 (1983); *Hewitt v. Helms*, 459 U.S. 460 (1988). In *Olim*, this Court wrote that:

> In order for an entitlement to exist, the underlying state law or order must contain particularized standards or criteria [guiding] the State's decision makers. If the decisionmaker is not required to base its decisions on objective and defined criteria, but instead can deny the requested relief for any constitutionally permissible reason or for no reason at all, the State has not created a constitutionally protected interest.

Olim, 461 U.S., at 249 (citation and internal quotations omitted).

The Tenth Circuit held that, under *Allen*, the term discretion can be read in "two distinct ways." *City of Castle Rock v. Gonzales*, 366 F.3d 1093, 1105 (CA10 2004). The first reading pertains to whether the official is "simply not bound by standards set by the authority in question." *Id.* (citation omitted). This inquiry, not addressed by the Court of Appeals, may lead to the conclusion that the Colorado General Assembly did not have the power to enact a statute that limited the executive discretion of local law enforcement officials in deciding whether to arrest at all. *See* Colorado Const., Art. XX.

The second reading of the term discretion may "instead signify that an official must use judgment in applying the standards set [sic] him [or her] by authority." *Id* (citation omitted). The Tenth Circuit in this case held that a determination of probable cause does not involve discretion. In passing, the Court says, "the officer is required to arrest or to seek a warrant to arrest the offending party." *Id.* While making a determination of probable cause could be said to be governed by objective predicates, the duty created by the statute at issue in this case contains *several* other discretionary decisions that must be made by local police officers, none of which contain "particularized standards or criteria". *Olim*, 461 U.S., at 249. The determination of probable cause is not, in short, the *only* decision an officer has discretion to make under the statute and court order. The remaining discretion available to officers with no particularized predicates voids any notion that the statute and order confer a property interest.

First, the order and statute at issue leave to the officer's discretion the determination of whether the suspect "knowingly" violated the order, *Gonzales*, 366 F.3d, at 1103. Certainly, making such a finding is discretionary, and no objective standards for rendering this decision are found.

Secondly, the restraining order is not clear as to what

an official is required to do when the suspect is not in a location known to the police at the time the allegations against the suspect are made. Obviously, if officers do not know the location of the suspect, they cannot arrest him. The officers in the instant case had no information on the whereabouts of the suspect until 8:30 pm. At that time they discovered that the suspect was not in their jurisdiction. 366 F.3d, at 1107 fn.11. Their decisions, at that point, were entirely discretionary under the language of the statute and order.

Even when the officers became aware of the suspect's location, their only defined duty was to "seek" a warrant for his arrest. *Id.*, at 1104 (citing C.R.S. § 18-6-803.5). The *en banc* panel noted that the officers were only under a duty to "use every reasonable means of enforcing the order." *Id.*, at 1103. Under the language of the statute, officers have ultimate discretion to determine what is "reasonable" in any given instance. This discretion is broadened when the suspect's whereabouts are unknown or the suspect is known to be in another jurisdiction.

The Panel seems to imply that the officers should have taken some action to pursue the suspect. Contrary to the Panel's suggestion, Colorado state statute mandates that peace officers "may not go outside the territorial boundaries of his authority to accomplish the *arrest* unless the officer is in fresh pursuit of the alleged offender." *People v. Vigil*, 729 P.2d 360, 365-66 (Colo. 1986) (emphasis added) (citing C.R.S. § 16-3-106). Thus, what the officers then decide to do turns on their perception of what is reasonable, leaving, under the Court of Appeals' analysis, District Courts to decide whether officers should have put out an "APB" to comply with the "reasonable" enforcement requirement. *Complaint* at 4. Admittedly, "reasonableness" under the Fourth Amendment is an objective standard. This standard, however, is based on a body of case law which does not apply here. In this instance, reasonableness must be

reviewed on considerations that include purely discretionary executive functions as how to best allocate scarce agency resources to maximize the delivery of law enforcement services to the public.

Further, the court order and statute at issue leave it up to officer discretion as to *when* such officer will "seek" an arrest warrant. C.R.S. § 18-6-803.5. Presumably, the officers in this case would have sought such an arrest warrant from a court had the suspect not violently ended his own life. The statute or order does not require the officer to *immediately* or *forthwith* obtain an arrest warrant if an arrest cannot be made. As such, a person can have no expectation as to *when* such an order will be sought, and thus can have no property interest of which she may be deprived.

In addition, the order and statute clearly contemplate that an officer will exercise his or her discretion as to whether to arrest since the statute permits officers to decide not to arrest if making an arrest would be "impracticable." C.R.S. § 18-6-803.5(3)(b). The term "impracticable" has been interpreted merely as "inconvenience." BLACK'S LAW DICTIONARY (6th Ed. 1990), at 756 (citing *Union Pac. R. Co. v. Woodahl*, 308 F.Supp. 1002, 1008 (Mont. 1970)). Another synonym for impracticable is "difficulty." *Woodahl*, 308 F.Supp., at 1007. An officer can thus refuse to arrest under the statute if he or she determines that it would be impracticable, inconvenient or difficult to arrest under the circumstances. There are no objective predicates set forth by the statute. The absence of such predicates defeats any expectation that the order or statute could confer a property right.

Ultimately, there is no way to assess what the officers were required to do in this instance. Officers were allegedly required to arrest. How could they arrest when the whereabouts of the suspect were unknown both to the officers and to Ms. Gonzales? The Officers were required to

use every reasonable means to bring the suspect to justice, but were barred by State law from pursuing the suspect outside of their jurisdiction. Officers can, under the terms of the order and statute, simply refuse to arrest if doing so would be impracticable, inconvenient, or difficult. If Officers cannot arrest, they must seek a warrant. The statute or court order, however, does not require them to do so immediately. In short, the statute leaves far too much discretion to police officials to be considered a property right under the test as set forth in *Olim* and *Roth*.

C. The Claim Must be Dismissed Because the Alleged Violation of the Fourteenth Amendment By Officers Was No More than a Negligent Omission

This Court has held that the "mere lack of due care by a state official" is insufficient to deprive an individual of life, liberty, or property under the Fourteenth Amendment *Daniels v. Williams*, 474 U.S. 327, 330 (1986). This Court wrote that, "Not only does the word deprive in the due process clause connote more than a negligent act, but we should not open the federal courts to lawsuits where there has been no affirmative abuse of power." *Id.*, at 330 (citation omitted). "Historically, this guarantee of due process has been applied to *deliberate* decisions of government officials to deprive a person of life, liberty, or property." *Id.*, at 332 (citation omitted). In fact, "To hold that injury caused by such [negligent] conduct is a deprivation within the meaning of the Fourteenth Amendment would trivialize the centuries-old principle of due process of law." *Id.*, at 332. In *Davidson*, this Court held that when an official "mistakenly believed that the situation was not particularly serious" or where the official "simply forgot" to do something, such "lack of care simply does not approach the sort of abusive government conduct the Due Process Clause was designed to prevent." *Davidson v. Cannon*, 474 U.S. 344, 348 (1986) (citation omitted). As

in *Daniels* and *Davidson*, *Amici* respectfully suggest that the conduct alleged in this case is "quite remote" from the concerns the Due Process Clause was enacted to protect. 474 U.S., at 332.

Although the claims against the officers were dismissed on grounds of qualified immunity, they could have been dismissed for failure to state a claim upon which relief may be granted. In this case there is nothing more than conclusory allegations which would permit an inference that the officers were anything more than merely negligent.

The complaint alleges that three officers dealt with Ms. Gonzales. *Compl.*, at 3-4. As to Officer Ruisi, it is alleged only that he did not "immediately" return the children to Ms. Gonzales. *Compl.*, at 3. Recall, however, that Officers Brink and Ruisi and Ms. Gonzales were not aware of their whereabouts. There are no facts alleged that Officer Ruisi could have "intended" the loss, i.e. the loss related to the failure to enforce. Thus, no claim is stated as to this officer.

As to Officer Brink, the complaint alleged that he did the same thing as Ruisi on the initial call. *Compl.*, at 3. Thereafter, Officer Brink was alleged to have received a telephone from Ms. Gonzales in which Ms. Gonzales notified Brink of the location of the suspect and requested that he "have someone check for Simon Gonzales or his vehicle at Elitch Gardens and put out an APB for Simon Gonzales." *Compl.*, at 3. No facts are alleged that Brink was anything more than negligent in his ultimate decision to not put out the APB and/or attempt to have a police department in another jurisdiction go searching for the car. It is important to recall that the terms of the restraining order do not require him to do anything more than that which is "reasonable," i.e., what another similarly situated officer would have done. As in *Davidson*, 474 U.S., at 348, at most, Officer Brink misperceived the severity of the situation.

As to Officer Ahlfinger, it is alleged that he heard Ms. Gonzales's complaint in person at the police station at 12:50 am, presumably after the amusement park had been closed. After hearing the story that Mr. Gonzales was not at *his* home with the children, that their whereabouts at that time were unknown, and that the suspect and children were still missing, it is alleged that Officer Ahlfinger "made no *reasonable* effort to enforce the TRO or locate the three children". Such conduct, it is respectfully submitted, is at best merely negligence and not actionable under the due process clause. *Compl.*, at 4 (emphasis added).

D. The Legislative History of the Act Supports the Conclusion that the General Assembly Did Not Intend to Create a Property Right in Restraining Order Enforcement

Amici respectfully suggest that it is inconsistent to find that the General Assembly intended to create a right of property while leaving in tact the immunity from suit afforded to public entities and officials in the performance of their duties brought under state law. *See* C.R.S. § 24-10-101, *et seq*. This inconsistency is starkly illuminated by the fact that the General Assembly refrained from providing any procedures due a person who demanded police action.

In footnote twelve of the *en banc* decision, the Court of Appeals took note of the fact that the State of Colorado and its political subdivisions were still immune from any suit related to a failure to enforce the law. The Court of Appeals incorrectly stated that the "GIA tells us *nothing* about whether Colorado intended by the statute before us to support the constitutionally protected entitlement of enforcement..." *Gonzales*, 33 F.3d, at 1108 (emphasis added). To the contrary, the General Assembly provided no remedy for the vindication of this right. C.R.S. § 24-10-106 (barring any claims that could lie in tort). This would suggest that the General Assembly did not intend to create a

property right to police enforcement. To do so would be to create a right without a remedy. In fact, the Court of Appeals even recognized that other states had waived immunity in situations such as this, permitting a victim of "unreasonable" police enforcement of a restraining order to sue individual police officers, *Gonzales*, 366 F.3d, at 1104 fn.9 (noting torts created by state statutes in three states under similar circumstances of this case). Yet, when it came to construing the fact that Colorado did *not* waive immunity vis-à-vis the breach of the legislatively imposed duty, the Court of Appeals was dismissive.

II. Assuming, *arguendo*, Plaintiffs Established That a Property Right Was Denied by Town of Castle Rock Officers, Plaintiffs Received All of the Process They Were Due Under the Constitution

Any process which may be due must strike a balance between the interests of the state and the individual. Under *Matthews v. Eldridge*, 424 U.S. 319, 348 (1976), "The ultimate balance involves a determination as to when, under our constitutional system, judicial-type procedures must be imposed upon administrative action to assure fairness." "All that is necessary is that the procedures be tailored, in light of the decision to be made, to the capacities and circumstances of those who are to be heard." *Id*, at 349 (citation and internal quotations omitted). In this case, the procedures employed were sufficient such that the constitution did not require more procedure than that which was supplied, i.e., the opportunity to be heard in person and by phone, the opportunity to relate the facts as you know them, and the opportunity to make specific demands for action.

In this regard, there is one fallacy that permeates the Court of Appeals' reasoning as to issue of the process due. It derives from a liberal reading of the language of *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972), where this Court stated: "For when a person has an opportunity to speak up in his own

defense, and when the state must *listen* to what he has to say, substantively unfair and simply mistaken deprivations of property interests can be prevented." *Id.* (emphasis added).

In the instant action, the officers, as alleged in the complaint, took a restraining order call from Ms. Gonzales and went to her home. This seems a procedure suited for the circumstance. The Town offered Ms. Gonzales the opportunity to present her evidence in person to Town officials.

The Tenth Circuit incorrectly draws the inference of poor procedures from an alleged lack of consideration by the officers. Specifically, the Court found that the officers' lack of consideration was a "sham which rendered her property interest not only a nullity, but a cruel deception." 366 F.3d, at 1117. The Court also accuses the officers of not considering Ms. Gonzales's request in a timely fashion. *Id.* Nonetheless, on the facts plead, it is clear that Ms. Gonzales was heard: she expressed her complaint to officers in person at her home. She presented all of the evidence she had at that time, to which the officers listened. The suspect was not at the home, no one knew where he and the children were, and so the Officers went back to their duty. Then, as Ms. Gonzales learned more information, she shared that information with the police, who again heard it. This new information revealed that the suspect was in another jurisdiction. The process provided was ongoing.

For these reasons, the *Amici* request that this Court reverse the decision of the *en banc* panel and hold that the Plaintiff failed to state a claim requiring dismissal pursuant to Rule 12.

Respectfully submitted,

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